



UNITED STATES DEPARTMENT OF COMMERCE  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/770,647	12/19/96	ISEBERG	S 10841US04

WILLIAM E VAUGHAN  
MCANDREWS HELD & MALLOY LTD  
500 W MADISON 34TH FLOOR  
CHICAGO IL 60661

LM01/0928

EXAMINER

LE, H

ART UNIT	PAPER NUMBER
2743	341

DATE MAILED:09/28/98

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

<b>Office Action Summary</b>	Application No. <b>08/770,647</b>	Applicant(s) <b>Iseberg et al.</b>
	Examiner <b>Huyen Le</b>	Group Art Unit <b>2743</b>

Responsive to communication(s) filed on Jul 15, 1998

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

Claim(s) 22-38 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) 22 and 25 is/are allowed.

Claim(s) 23, 24, and 26-34 is/are rejected.

Claim(s) 35-38 is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

**Part III DETAILED ACTION**

*Claim Objections*

1. For a clarification, claims 35-38 should be fixed as follows:

In claim 35, line 3, the first and second occurrence "portion" should be changed to --end--;

in line 14, after "first", "portion" should be changed to --end--;

in line 15, after "contacting", --the surface of the elongated tubular portion-- should be inserted; and

in line 16, after "second", "portion" should be changed to --end--.

In claim 36, line 3, after "open end", --disposed opposite the end wall-- should be inserted.

*Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 2743

3. Claim 26-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Miyahra (4,447,677).

Regarding claim 26, Miyahra teaches a high-fidelity insert earphone (the Applicant should note that the limitation of "high-fidelity" is just in the preamble) which comprises a unitary housing (3, figure 1). The housing comprises a hollow body portion which has an end wall, and a hollow elongated tubular portion (12) which extends from the end wall.

Miyahra further teaches a receiver (1) which has a sound outlet port (54, 55).

The earphone of Miyahra further comprises an insert (57, and see col. 4, lines 33-36). As shown in figure 1, the resilient insert (57) is disposed between the end of the receiver (1) and the end wall, and the outlet port (55) of the receiver mates or fits and extends only partially into the tubular portion (12).

Regarding claim 27, it is inherent that the insert (57) inhibits movement of the receiver within the hollow body portion.

Regarding claim 28, Miyahra teaches a damper (58, 59) which is supported within the hollow elongated tubular portion (12).

*Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 2743

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103, the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 C.F.R. § 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of potential 35 U.S.C. § 102(f) or (g) prior art under 35 U.S.C. § 103.

5. Claims 23 and 24 are rejected under 35 U.S.C. § 103 as being unpatentable over McCabe U.S. patent no. 3,671,685) in view of Miyahra et al. (U.S. patent no. 4,447,677) or Brander (GB 2,155,276) and further in view of Killion (U.S. patent no. 4,677,679).

Regarding claims 23 and 24, McCabe teaches an apparatus which comprises an electrical connector (3a, 3b), a plurality of conductors (4a', 4a'', 4b', 4b''), and a pair of insert earphones (2a, 2b). Each of the earphones comprises a unitary housing (2a, 2b), a receiver (5), and a resilient sealing member (8a, 8b).

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McCabe lacks the teaching of a damper supported within the hollow elongated tubular portion (7a, 7b). However, it is very well-known in the art to provide a damper disposed at the hollow tube which is connected to the ear canal of the wearer.

Miyahra or Brander shows a damper (58 in Miyahra and 36 in Brander) which is disposed at the outlet tube which is connected to the ear canal

Therefore, it would have been obvious to one skilled in the art to provide the damper, as taught by Miyahra or Brander, in the outlet tube (7a, 7b) of the McCabe headset, for preventing dirt or the earwax and attenuating the acoustic of the sound path.

McCabe in view of Miyahra or Brander do not teach a high fidelity response as claimed in claim 23 or a filter with first and second conductors as claimed in claim 24 for the earphone. However, it is very well-known in the art to provide a filter for improving the quality sound of the earphone.

Further, Killion teaches a network circuit (40a, 40a', 40b) with first and second conductors in the earphone for providing a high-fidelity response (column 3, lines 42-50 and column 6).

Therefore, it would have been obvious to one skilled in the art to provide a network circuit or the filter, as taught by Killion, in the earphone of the McCabe in view of Miyahra or Brander in order to provide a high quality sound for the earphone.

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6. Claims 29-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miyahra et al. (U.S. patent no. 4,447,677) in view of Kelsey (U.S. patent no. 2,430,229).

Regarding claims 29-30 and 33, Miyahra teaches an earplug (11) and lacks the teaching of a resilient material for the earplug. However, it is very well-known in the art to provide an earplug which is made of a resilient material.

Kelsey teaches an earplug (10, figures 1-2, 5 and 11) which is made of rubber (col.3, lines 2-3) for an insert earpiece.

Therefore, it would have been obvious to one skilled in the art to provide the resilient material, as taught by Kelsey, for the earplug of Miyahra for providing a better acoustic sealing and a better fitting to the ear canal of the wearer.

Regarding claims 31 and 34, since Miyahra in view of Kelsey has the structure as claimed, it is obvious that the earphone of Miyahra in view of Kelsey includes the characteristic as claimed.

Regarding claim 32, Kelsey shows the resilient sealing member has a plurality of outwardly projecting flange portions as claimed (figures 1 and 5).

*Allowable Subject Matter*

7. Claims 22 and 25 are allowed.

8. Claims 35-38 would be allowable if rewritten or amended to overcome the claim objections in paragraph 1, set forth in this Office action.

*Response to Arguments*

9. Applicant's arguments filed 07/22/98 have been fully considered but they are not persuasive.

Responding to the arguments on page 5 for claim 26, the Applicant should note that Miyahra does show the outlet port (55) which mates, fits or joints with the hollow tubular portion (12, also see narrow end of the portion 12).

10. Applicant's arguments with respect to claims 23-24 have been considered but are moot in view of the new ground(s) of rejection.

*Conclusion*

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is (703) 305-4844. The examiner can normally be reached on Monday through Friday from 8:30AM to 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz, can be reached on (703) 305-4708.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.

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Any response to this action should be mailed to:

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

or faxed to:

(703) 308-9051, (for formal communications intended  
for entry)

Or:

(703) 305-9508 (for informal or draft  
communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive,  
Arlington, VA., Sixth Floor (Receptionist).

HL

September 25, 1998

  
HUYEN LE  
PRIMARY EXAMINER